

No. 83-1384

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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JERRY R. TUCKER, SR.

Petitioner,

VERSUS

UNITED STATES OF AMERICA.

Respondent.

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PETITIONER'S REPLY TO RESPONDENT'S WAIVER

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PETITIONER'S REPLY  
TO RESPONDENT'S WAIVER

Petitioner submits that by its waiver of the right to file a response to the petition in this case, Respondent has admitted that there is no binding precedent from the Supreme Court addressing the issue raised in the instant case, and the Petition should be granted.

This court has recently reminded all courts and the Bar that denial of certiorari carries no precedential force. Shaw v. Delta Airlines, Inc., \_\_\_ U.S. \_\_\_, 77 L.Ed.2d 490, at 499, fn. 11, 103 S.Ct. 2890 (1983), citing Hicks v. Miranda, 422 U.S. 332, 343-345, and fn. 14, 45 L.Ed.2d 223, 95 S.Ct. 2281 (1975).

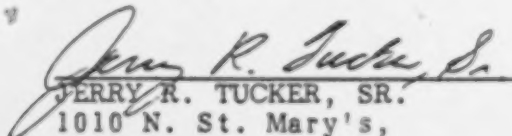
The principal authorities heretofore cited by Respondent and consistently relied upon by the Tax Court and Circuit Courts are: Johnson v. U.S., 422 F.Supp. 958 (N.D. Ind. 1976), aff'd per curiam

sub nom; Barter v. U.S., 550 F.2d 1239 (7th Cir. 1977), cert.denied, 434 U.S. 1012, 54 L.Ed2d 755, 98 S.Ct. 725 (1978); Mapes v. U.S., 576 F.2d 896 (Ct.Cl.), cert. denied, 439 U.S. 1046, 58 L.Ed2d 705, 99 S.Ct. 722 (1978), and Drucker v. Commissioner, 697 F.2d 46 (2d Cir. 1982), cert. denied, 103 S.Ct. 2429 (1983); Kellums v. Commissioner, 58 T.C. 556 (1972), aff'd per curiam, 474 F2d 1399 (2d Cir.), cert. denied, 414 U.S. 831 (1973). Petitioner points out that all of these cases are certiorari denied situations and are not binding precedent from this Court. Petitioner also points out that none of these cases deals precisely with the issue raised by Petitioner in the instant case, i.e., whether the Constitution gives Congress the power under Article I, augmented by the Sixteenth Amendment, to assess a direct tax,

without apportionment, on marital status and family relationship that is unavoidable by imbedding it in the rate structure for an income tax.

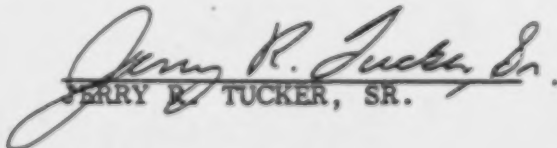
The Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the above and foregoing Petitioner's Reply to Respondent's Waiver has been sent to the Solicitor General, Department of Justice, Washington, D.C. 20530, by certified mail, return receipt requested, on this the 16th day of March, 1984.

  
JERRY R. TUCKER, SR.